

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mac Muir	Team: Squad #6	CCRB Case #: 201906798	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/31/2019 1:07 PM	Location of Incident: 849 Flushing Avenue; 90th Precinct Stationhouse	Precinct: 90	18 Mo. SOL 1/31/2021	EO SOL 9/17/2021	
Date/Time CV Reported Fri, 08/02/2019 10:20 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 08/02/2019 10:20 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michal Jalbrzykowski	21736	959710	090 PCT
2. SGT Kitwane Lewis	04105	951915	090 PCT
3. POM Stephen Sheppard	13816	945001	090 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Olga Dudka	23501	967049	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Kitwane Lewis	Abuse: At 849 Flushing Avenue in Brooklyn, Sergeant Kitwane Lewis searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Stephen Sheppard	Force: At 849 Flushing Avenue in Brooklyn, Police Officer Stephen Sheppard used physical force against § 87(2)(b)	
C.POM Michal Jalbrzykowski	Abuse: At 849 Flushing Avenue in Brooklyn, Police Officer Michal Jalbrzykowski threatened § 87(2)(b) with the use of force.	
D.POM Stephen Sheppard	Abuse: At 849 Flushing Avenue in Brooklyn, Police Officer Stephen Sheppard frisked § 87(2)(b)	
E.POM Stephen Sheppard	Abuse: At the 90th Precinct stationhouse, Police Officer Stephen Sheppard strip-searched § 87(2)(b)	

Case Summary

On August 2, 2019, § 87(2)(b) submitted this complaint with the CCRB via telephone.

On July 31, 2019, at approximately 1:07 p.m., Sgt. Kitwane Lewis accompanied by PO Stephen Sheppard, and PO Michal Jalbrzykowski of the 90th Precinct, pulled over § 87(2)(b) in the vicinity of 849 Flushing Avenue in Brooklyn for a moving violation. Sgt. Lewis reached through the passenger-side window, where § 87(2)(b) sat and pulled a bottle of medicine out of § 87(2)(b) glove box (**Allegation A: Abuse of Authority: § 87(2)(g)**). PO Stephen Sheppard pulled § 87(2)(b) out of the vehicle (**Allegation B: Force: § 87(2)(g)**). As PO Sheppard struggled with § 87(2)(b) PO Jalbrzykowski threatened to use his Taser against § 87(2)(b) (**Allegation C: Abuse of Authority: § 87(2)(g)**). § 87(2)(b) exited the vehicle. PO Sheppard allegedly frisked § 87(2)(b) (**Allegation D: Abuse of Authority: § 87(2)(g)**). Sgt. Lewis placed both § 87(2)(b) and § 87(2)(b) under arrest and transported them to the precinct stationhouse.

At the 90th Precinct stationhouse, PO Sheppard strip-searched § 87(2)(b) (**Allegation E: Abuse of Authority: § 87(2)(g)**). PO Sheppard recovered marijuana inside of § 87(2)(b) vehicle.

§ 87(2)(b) was arrested for § 87(2)(b)

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BWC footage was obtained by the investigation (BR 01-09). Cell phone video was obtained by the investigation (BR 10). § 87(2)(g)

Findings and Recommendations

Allegation A – Abuse of Authority: At 849 Flushing Avenue in Brooklyn, Sergeant Kitwane Lewis searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) testified that after he was stopped he reached into his glove compartment to obtain his vehicle registration. He had a promethazine in the glove compartment that was labeled and prescribed to him. He did not believe the bottle was visible to the officers because it was covered by papers. Sgt. Lewis reached into the glove compartment, searched through it, and grabbed the bottle. Sgt. Lewis yelled that there were narcotics in the vehicle and told PO Sheppard to pull § 87(2)(b) out of the vehicle. § 87(2)(b) denied that he was in possession of marijuana during this incident. He was unaware that officers ever claimed he had been in possession of marijuana.

Sgt. Lewis testified that he reached into the glove compartment for two reasons. First, when § 87(2)(b) first rolled down his window, Sgt. Lewis smelled the odor of marijuana. Second, when Sgt. Lewis looked into § 87(2)(b) glove compartment, he observed what he believed was a bottle used to contain promethazine or codeine. It did not appear to have a label on it, so he grabbed it out of the glove compartment. After Sgt. Lewis removed § 87(2)(b) to the precinct stationhouse, he determined that the bottle of promethazine/codeine was prescribed to § 87(2)(b)

PO Sheppard and PO Jalbrzykowski both testified that upon approaching § 87(2)(b) vehicle, they immediately smelled marijuana.

BWC did not depict officers searching for marijuana at 849 Flushing Avenue. However, PO Sheppard's BWC (BR 07) beginning at 25 seconds, showed him conduct an inventory search of § 87(2)(b) vehicle at the 90th Precinct stationhouse. He recovered marijuana and a marijuana grinder.

During a lawful vehicle stop, an officer may conduct a warrantless search of a vehicle and its occupants if that officer detects the odor of marijuana. People v. Chestnut, 43 A.D.2d 260 (1974) (BR 14).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Force: At 849 Flushing Avenue in Brooklyn, Police Officer Stephen Sheppard used physical force against § 87(2)(b)

§ 87(2)(b) testified that Sgt. Lewis told PO Sheppard to pull § 87(2)(b) out of the vehicle. PO Sheppard grabbed § 87(2)(b) by the left arm and instructed him to get out of the vehicle. § 87(2)(b) asked what was happening. PO Sheppard pulled § 87(2)(b) out of the vehicle by his arm. § 87(2)(b) denied resisting PO Sheppard. PO Sheppard pushed § 87(2)(b) between the door and the frame of the vehicle.

PO Sheppard stated that he instructed § 87(2)(b) to get out of the vehicle because the vehicle smelled of marijuana. § 87(2)(b) did not comply with several requests to exit the vehicle. PO Sheppard pulled § 87(2)(b) out because § 87(2)(b) tried to stay inside of the car and told him to get off when PO Sheppard first grabbed him. PO Sheppard pulled § 87(2)(b) hands together after he instructed § 87(2)(b) to place his hands behind his back. PO Sheppard pushed § 87(2)(b) between the vehicle door and frame to limit his movement.

Sgt Lewis' BWC (BR 01), beginning at 1 minute and 20 seconds, and PO Sheppard's BWC (BR 0X) showed that § 87(2)(b) refused several requests to provide his name, Sgt. Lewis instructed PO Sheppard to pull § 87(2)(b) out of the vehicle. Sgt. Lewis told § 87(2)(b) there were narcotics in the vehicle. PO Sheppard asked § 87(2)(b) to step out of the vehicle four times. When he did not exit, PO Sheppard opened the driver side door and grabbed § 87(2)(b) by the wrist. § 87(2)(b) asked why PO Sheppard was touching him. PO Sheppard pulled § 87(2)(b) arm and told him to step out of the vehicle. § 87(2)(b) said that he was going to get out and told PO Sheppard to get off of him. PO Sheppard repeatedly told § 87(2)(b) to step out of the vehicle and not to pull his arm away. § 87(2)(b) stepped out of the vehicle and repeatedly told PO Sheppard to get off him. § 87(2)(b) braced his arm. PO Sheppard pushed § 87(2)(b) between the vehicle door and the frame of the vehicle. PO Jalbrzykowski pointed his Taser at § 87(2)(b) and asked, "You want to get Tased?" PO Sheppard placed § 87(2)(b) into handcuffs and escorted him to the back of the police vehicle.

Officers are to apply no more than the reasonable force necessary to gain control. Patrol Guide Procedure 221-02 (BR 15).

§ 87(2)(g)

Allegation C – Abuse of Authority: At 849 Flushing Avenue in Brooklyn, Police Officer Michal Jalbrzykowski threatened § 87(2)(b) with the use of force.

§ 87(2)(b) testified that as PO Sheppard pushed him between the door and the frame of the vehicle,

PO Jalbrzykowski asked, “Do you want to get Tased?” He did not allege that PO Jalbrzykowski pointed his Taser.

PO Jalbrzykowski testified that he said, “Do you want to get Tased,” and pointed his Taser at § 87(2)(b). He did this because § 87(2)(b) resisted, and to get him to comply with PO Sheppard’s efforts to handcuff him.

PO Jalbrzykowski’s BWC (BR 0X), beginning at 1 minute and 40 seconds, showed that § 87(2)(b) refused multiple requests to exit his vehicle, and then braced his arms to prevent PO Sheppard from placing him into handcuffs. PO Sheppard pushed § 87(2)(b) between the door and the frame of the vehicle. PO Jalbrzykowski pointed his Taser at § 87(2)(b) and said, “You want to get Tased? Stop acting up.”

Officers may use a Taser to subdue persons who are actively resisting. A person is actively resisting when they physically evade an officer by bracing, tensing, or verbally signaling an intention to avoid or prevent being taken into custody. Patrol Guide Procedure 221-08 (BR 16).

§ 87(2)(g)

Allegation D – Abuse of Authority: At 849 Flushing Avenue in Brooklyn, Police Officer Stephen Sheppard frisked § 87(2)(b)

§ 87(2)(b) alleged that after she exited § 87(2)(b) vehicle, PO Jalbrzykowski walked her to the back of the vehicle and touched her side from mid chest to mid-thigh.

Sgt. Lewis, PO Sheppard, and PO Jalbrzykowski all denied that any officer frisked § 87(2)(b).

PO Jalbrzykowski’s BWC footage (BR 03), beginning at 2 minutes and 40 seconds, captured this portion of the incident and showed that no officer frisked § 87(2)(b).

§ 87(2)(g)

Allegation E – Abuse of Authority: At the 90th Precinct stationhouse, Police Officer Stephen Sheppard strip-searched § 87(2)(b)

§ 87(2)(b) testified that when they arrived at the 90th Precinct stationhouse, PO Sheppard brought he and § 87(2)(b) to the holding cells. PO Sheppard told § 87(2)(b) to go into the bathroom, take off his clothes, and squat. § 87(2)(b) walked into the bathroom, where the only person he could see was PO Sheppard. PO Sheppard instructed § 87(2)(b) to take off his shorts and his underwear. § 87(2)(b) removed his shorts and underwear and squatted. PO Sheppard stood in the bathroom door. § 87(2)(b) could not see anyone other than PO Sheppard. § 87(2)(b) dressed and then exited the bathroom. PO Sheppard placed § 87(2)(b) into a holding cell.

PO Sheppard testified that at the front desk of the stationhouse, Sgt. Lewis said, “Search him good.” PO Sheppard took this as an instruction from Sgt. Lewis to strip-search § 87(2)(b). PO Sheppard brought § 87(2)(b) to the cell area. PO Sheppard thoroughly searched § 87(2)(b) who refused to spread his legs. PO Sheppard felt between § 87(2)(b) genitals and buttocks and felt a hard object in his underwear. It felt like a plastic bag that PO Sheppard believed contained

narcotics. PO Sheppard told § 87(2)(b) to step into the bathroom and then turned off his BWC. PO Sheppard and PO Jalbrzykowski stood outside and watched § 87(2)(b) in the bathroom. No one else could see him. PO Sheppard asked § 87(2)(b) to pull down his shorts and underwear and squat. § 87(2)(b) complied, and PO Sheppard could see that the hard object had been the bunching of § 87(2)(b) underwear. PO Sheppard asked § 87(2)(b) to pull his pants up. He placed § 87(2)(b) into a cell. PO Sheppard told Sgt. Lewis that he had conducted a strip-search. He expected that Sgt. Lewis would have documented it in the Command Log.

PO Jalbrzykowski testified that § 87(2)(b) was not strip-searched. PO Jalbrzykowski had never heard Sgt. Lewis use the term, “Search him good,” to instruct someone to conduct a strip-search.

Sgt. Lewis testified that § 87(2)(b) was not strip-searched. He did not believe there was any reason to have strip-searched § 87(2)(b). He denied authorizing a strip-search. He denied ever using the phrase “search him good” to instruct an officer to conduct a strip-search. If there had been a strip-search, Sgt. Lewis would have explicitly instructed an officer to conduct the strip-search, he would have personally witnessed the strip-search, and would have documented the strip-search in the command log.

The 90th Precinct Command Log for July 31, 2019 (BR 17) does not indicate that § 87(2)(b) was strip-searched.

PO Sheppard and Sgt. Lewis’ BWCs (BR 01 and BR 04), show that Sgt. Lewis did not say “search him good” before PO Sheppard brought § 87(2)(b) into the precinct holding cells.

Strip searches may only be conducted with approval of the arresting officer’s supervisor. Patrol Guide Procedure 208-05 (Board Review 18).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 21).
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- Sgt. Lewis has been a member-of-service for eight years and has been a subject in 11 CCRB complaints and 37 allegations, of which one was substantiated.
 - Case # 201901804 involved a substantiated allegation of failure to provide a Right to Know Act card against Sgt. Lewis. The board recommended Command Discipline A and the NYPD has not yet imposed discipline.
- PO Sheppard has been a member-of-service for twelve years and has been a subject in 14 CCRB complaints and 30 allegations, of which four were substantiated.
 - Case #200804416 involved a substantiated allegation of a question against PO Sheppard. The board recommended Command Discipline and the NYPD imposed no discipline.
 - Case #201402388 involved substantiated allegations of a stop, a frisk, and a search (of person) against PO Sheppard. The board recommended Command Discipline B and the NYPD imposed Command Discipline B.
- PO Jalbrzykowski has been a member-of-service for four years and has been a subject in 10 cases and 27 allegations, of which two were substantiated.

- Mediation, Civil and Criminal Histories**
- This case was not eligible for mediation.
 - § 87(2)(b) § 87(2)(c)
 - § 87(2)(b) § 87(2)(c)
 - § 87(2)(b) filed a Notice of Claim with NYC claiming assault, battery, false imprisonment, malicious prosecution, intentional infliction of emotional distress, negligent infliction of emotional distress, violation of civil rights, and negligence by the police department. He is seeking \$2,000,000 as redress (BR 23). There is no 50H hearing scheduled.
 - § 87(2)(b) filed a Notice of Claim with NYC claiming assault, battery, false imprisonment, malicious prosecution, intentional infliction of emotional distress, negligent infliction of emotional distress, violation of civil rights, and negligence by the police department. She is seeking \$2,000,000 as redress (BR 24). There is no 50H hearing scheduled.

Investigator:	<u>Mac Muir</u> Signature	<u>Supervising Investigator Mac Muir</u> Print Title & Name	<u>April 6, 2020</u> Date
Squad Leader:	<u>Jessica Pena</u> Signature	<u>IM Jessica Pena</u> Print Title & Name	<u>4/7/2020</u> Date
Reviewer:	<u> </u> Signature	<u> </u> Print Title & Name	<u> </u> Date